

MAY 26 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>SERGIO ANTONIO GONZALEZ ARIAS,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>

No. 05-70662

Agency No. A075-644-697

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 12, 2009**

Before: PREGERSON, CANBY, and BERZON, Circuit Judges.

Sergio Antonio Gonzalez Arias, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order summarily affirming

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

an immigration judge's ("IJ") removal order. We have jurisdiction under 8 U.S.C. § 1252, and we grant the petition for review and remand for further proceedings.

Gonzalez Arias argued before the BIA that the IJ violated due process by denying his application for relief on the ground that he failed to update his fingerprints before his removal hearing. The BIA erred in not addressing Gonzales Arias' argument. *See Montes-Lopez v. Gonzales*, 486 F.3d 1163, 1165 (9th Cir. 2007) ("[T]he BIA errs when it fails on appeal to consider and decide claims that the IJ proceedings suffered from procedural irregularity").

Moreover, the agency did not have the benefit of our intervening decision in *Cui v. Mukasey*, 538 F.3d 1289 (9th Cir. 2008), which held that the denial of a continuance for fingerprint processing prior to April 2005 may be an abuse of discretion. We therefore remand for reconsideration of Gonzalez Arias' appeal. *See id.* at 1292-95; *see also Karapetyan v. Mukasey*, 543 F.3d 1118, 1129-32 (9th Cir. 2008).

PETITION FOR REVIEW GRANTED; REMANDED.